

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 306 of 2000

in

SPECIAL CIVIL APPLICATION No 10091 of 1999

with

CIVIL APPLICATION NO. 6009 OF 2000

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI

and

Hon'ble MR.JUSTICE J.M.PANCHAL

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
  5. Whether it is to be circulated to the Civil Judge? : NO

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GUJARAT STATE MACHINE TOOLS CORPORATION LTD

Versus

JAYENDRASINGH ANIRUDHSINGH JADEJA  
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Appearance:

MR MANISH R BHATT for Appellants

MR TR MISHRA for Respondent No. 1  
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CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI

and

Date of decision: 31/07/2000

C.A.V.JUDGEMENT (Per D.M. DHARMADHIKARI, C.J.)

#. Heard Shri M.R.Bhatt, advocate for the appellant-employer Gujarat State Machine Tools Corporation Limited and Shri T.R. Mishra, advocate for the respondent workman.

#. The respondent-workman served for long 13 years with the appellant-employer Gujarat State Machine Tools Corporation Limited ('GSMTCL' for short). On the alleged ground of unauthorised absence from duties for certain periods, his services were terminated on 13-11-1998. The workman approached the Labour Court under Section 10 of the Industrial Disputes Act. The Labour Court passed the award on 27-5-1997 directing the appellant-employer to reinstate the respondent-workman in service with continuity of service and 75% backwages.

#. The award of the Labour Court dated 27-5-1997 was challenged in Special Civil Application No. 2339 of 1998. The learned Single Judge, as he then was (N.N. Mathur, J) found the termination of the respondent-workman illegal, but deprived him of 75% backwages as awarded by the Labour Court on the ground that the respondent-workman was for a long time absent from duties. The award of the Labour Court of reinstatement in service was, however, maintained.

#. During the pendency of the proceedings before the learned Single Judge against the award of the Labour Court of reinstatement granted to the respondent-workman, the appellant-employer GSMTCL was declared sick industry and was closed from 1-10-1997. Board for Industrial and Financial Reconstruction gave opinion on 7-3-1997 to wind up the appellant-employer GSMTCL which is a company. The winding up petition came to be filed in this Court, being Company Petition No. 99 of 1997. During the pendency of that winding up petition, on behalf of the Workers Union, Special Civil Application No. 1714 of 1998 was filed seeking directions to the appellant-employer to clear all legal dues of the workmen. In the course of petition, an amicable settlement by way of a package deal between the Workers Union and the appellant-employer GSMTCL was arrived at under the provisions of Section 2(p) of the Industrial Disputes Act, 1947 read with Rule 62 of Industrial Disputes (Gujarat) Rules, 1966. As per the settlement dated 18-3-1999 arrived at between the

appellant-employer and the Workers Union, it was agreed that all permanent and regular workmen, who were on the muster role of the Company on 1-10-1997, i.e., the date on which the company was closed, and who were continued in service till 31-10-1998, would be entitled to all their service dues including pay, dearness allowance and house rent allowance.

#. As the present respondent-workman was not granted any service benefits in terms of the settlement dated 18-3-1999 reached between the employer and the Workers Union, he has approached this Court in Special Civil Application No. 10091 of 1999 which has given rise to this Appeal. The learned Single Judge by his order dated 7-4-2000 negatived all the contentions raised on behalf of the appellant-employer and allowed the petition of the respondent-workman by granting him relief for payment of all his service dues in terms of settlement the dated 18-3-1999.

#. Learned counsel appearing for the respondent-workman in this Letters Patent Appeal questions the correctness of the decision of the learned Single Judge dated 7-4-2000. The first ground urged on behalf of the appellant-employer is that GSMTCL is a limited company and does not fall within the definition of 'State' under Article 12 of the Constitution of India, and therefore it was not amenable to writ jurisdiction of this Court under Article 226 of the Constitution of India. The above preliminary ground urged was considered by the learned Single Judge and relying on the decisions of the Supreme Court and of this Court, it was held that for enforcement of statutory and public duties a writ can be issued even against a private litigant under Article 226 of the Constitution of India.

#. The preliminary ground urged about maintainability of the Appeal need not detain us any longer, since, in our view, what is sought to be enforced against the employer, being a limited company, is the alleged statutory rights of the workman in terms of the settlement reached under the provisions of the Industrial Disputes Act. A writ can be issued against the employer for compelling it to recognise and enforce the statutory right of the workman in the employment governed by statutory provisions like the Industrial Disputes Act, 1947.

#. The second ground urged is that the workman seeks to enforce the terms of a settlement reached under section 2(p) of the Industrial Disputes Act. The statutory remedy for the same is to approach the industrial forum

by seeking a reference under Section 10 of the Industrial Disputes Act.

#. The aforesaid ground was also considered by the learned Single Judge and it was rightly held that alternative remedy is not a bar for invoking extraordinary powers of this Court under Article 226 of the Constitution of India. Here, the workman had already obtained from the Labour Court, an order of reinstatement in service with continuity and 75% backwages. It was only partly interfered with by the learned Single Judge. During pendency of proceedings in the High Court against the award of reinstatement, the industry was declared sick and winding up proceedings had commenced. A settlement was reached between the employer and the Workers Union, which granted service benefits to all regular and permanent employees in employment of the industry up to a particular date. On these facts and events, relegating the workman to the ordinary remedy of raising an industrial dispute would have been too cumbersome and dilatory. It is on these facts that the learned Single Judge, and rightly so, did not relegate the workman to resort to the ordinary remedy of raising an Industrial Dispute under Section 10 of the Industrial Disputes Act, 1947. We, therefore, find no error in exercise of jurisdiction by the learned Single Judge in considering the case of the respondent-workman for grant of relief under Article 226 of the Constitution of India.

##. Lastly, on merits, on behalf of the appellant-employer, it is urged that the present workman, whose services came to be terminated and who was directed to be notionally reinstated in service with 75% backwages by the Labour Court and without backwages by the learned Single Judge in the writ petition, could not be deemed to be in 'actual service' to be able to obtain the benefit of the terms of the settlement reached between the appellant-employer and the Workers Union.

##. On behalf of the respondent-workman, learned counsel rightly pointed out that the award of the Labour Court granted him benefit not only of reinstatement but also continuity in service and has even awarded 75% backwages. The award of the Labour Court came to be modified by the order of the learned Single Judge, as he then was (N.N. Mathur, J) by order dated 10-11-1998, only to the extent of depriving payment of 75% backwages. The other part of the award of the Labour Court granting reinstatement in service with continuity of service was left undisturbed by the learned Single Judge.

##. For the purpose of giving benefit of settlement, the respondent-workman, who is held to have been wrongly terminated and granted relief of reinstatement and continuity of service has to be treated to be, in 'service'. Any other interpretation on the terms of the settlement would nullify completely the effect of the award which is in favour of the workman. The argument advanced on behalf of the appellant-employer, therefore, cannot be accepted, that to obtain benefit of the settlement, only those workmen who actually discharged duties and rendered service to the employer were covered. As has been mentioned above, the appellant-employer GSMTCL was closed on 1-10-1997 and thereafter no workman was actually discharging any duties for the employer. The cut off date for giving benefit of the settlement is stated to be 31-12-1998. On that cut off date, not all the workman, because of the closer of the Company, were actually rendering any services. The workmen in actual service, therefore, would be all those who were borne on the employer register of the workmen as permanent and regular workmen. Such a status of regular and permanent workman was definitely held by the present workman, who had put in long 13 years of service. This status was recognised by the Labour Court by setting aside his termination and granting him relief of reinstatement in service. The award of reinstatement in service has the effect of giving continuity of service to the workman and for the purpose of the settlement reached between the employer and the union, the present workman has to be deemed to be in continuous and actual service. The challenge, therefore, to the decision of the learned Single Judge, on the above ground also cannot be accepted.

##. Consequent to the above discussion, we find no merit in this Letters Patent Appeal and the same is dismissed accordingly.

As the main matter is dismissed, the Civil Application for stay does not survive and the same is hereby disposed of as having become infructuous.

(D.M. DHARMADHIKARI, C.J.)

(J.M. PANCHAL, J)

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